

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPEALALTE SIDE

**CRIMINAL APPLICATION NO.1406 OF 2004**

Bavtis Francis Fernandes ..Applicant  
V/s  
Nitin Govind Raichur & Anr. ..Respondents.

Mr.R.D.Suryavanshi, Advocate for the applicant.

Mr.S.M. Kamble, Advocate for respondent No.1.

Mrs. M.H. Mhatre, A.P.P.

**CORAM : J.H. BHATIA, J.**

**DATE : 6TH JUNE , 2007.**

P.C.

. Heard Mr. Suryavanshi, learned Counsel for the applicant and Mr. Kamble, leaned Counsel for respondent No.1. Perused the copies of the complaint, oral and documentary evidence, as well as judgment impugned in this matter.

2. The applicant is the original complainant. He had filed a complaint under Section 138 of Negotiable Instruments Act contending that respondent No.1-accused had obtained friendly loan of Rs. 3,10,000/- from him in several instalments and he had also executed a memorandum of understanding dated 21/9/2002 in his

favour. He further contended that respondent No.1 had issued the cheque dated 12/2/2003 for the amount of Rs. 3,10,000/- in favour of the complainant. On presentation, the cheque was dishonoured on the ground of "insufficient fund". In spite of notice served on respondent No.1, he failed to make the payment. Therefore, the complaint.

3. The respondent had denied to have taken loan from the applicant. The learned trial Court found that the cheque, as well as the memorandum of understanding were signed by respondent-accused. However, in view of the terms of the memorandum of understanding, it becomes clear that the loan was advanced by Kamgar Utkarsha Nidhi and not by the complainant personally. The memorandum of understanding clearly reveals that the memorandum of understanding was entered into and executed between the applicant and the respondent No.1 but clause (1) made it clear that the applicant was representing the members of fund known as Kamgar Utkarsh Nidhi and the said members included the respondent also. The complaint is not filed for and on behalf of the Kamgar Utkarsha Nidhi nor the said Kamgar Utkarsha Nidhi authorised the applicant to file the complaint in his

individual capacity. The learned Counsel for the applicant contends that the applicant was in fact running the said fund in the name and style as "Kamgar Utkarsha Nidhi" but it is his proprietorship concern. For this, there is no substance or material on record neither in the complaint it was mentioned that he was a proprietor of Kamgar Utkarsha Nidhi, nor the memorandum of understanding gives any such indications. In view of this, the learned trial Court acquitted the accused-respondent No.1. I find no fault in the reasons for acquittal.

. Leave to prefer appeal refused. The application stands rejected.

(J.H. BHATIA, J.)